

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 513 OF 2015

Shri Vitthal Nagnath Chavan

... Petitioner

Vs

1. The State of Maharashtra & Ors.

... Respondents

Mr. Anil V. Anturkar, senior counsel with Mr. Tanaji Mhatugade i/b Mr. Sugandh B. Deshmukh for the Petitioner.

Ms. Sushma Bhende, AGP, for the Respondent No.1.

Ms. Gauri Godse for the Respondent No.3.

**CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

THURSDAY, 20TH OCTOBER, 2016

P.C. :

1. By this writ petition under Article 226 of the Constitution of India, the petitioner prays for quashing and setting aside a Government Resolution dated 4th August, 2014 and an order dated 18th July, 2014.

2. At the same time, the petitioner claims a declaration that in the light of a Government Resolution dated 5th July, 2014, he

should be treated as having voluntarily retired from judicial service. For such a declaration, reliance is placed upon Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982. Once such declaration is granted, then, according to the petitioner, all consequential reliefs are admissible and be extended to him.

3. Few facts are required to be stated to appreciate the arguments of Mr. Anturkar, learned senior counsel appearing on behalf of the petitioner. Undisputedly, the petitioner, upon completion of the process, was inducted into judicial service. He has joined as a Civil Judge, Junior Division and claims that by sheer hard work, he was promoted to the post of Civil Judge, Senior Division in the year 2004 whereafter he earned a further promotion to the post of Additional District Judge.

4. The petitioner was in service as Additional Sessions Judge and Ad-hoc District Judge-I, Baramati from June 2012 onwards. The petitioner gave a notice, in advance, seeking voluntary retirement from judicial service. That notice dated 7th May, 2014, copy of which is annexed as Annexure A, was received in the Registry of this Court and thereafter this Court

recommended on its Administrative side, acceptance of that application / notice / proposal for voluntary retirement. A resolution styled as Government Resolution dated 5th July, 2014 (Annexure B) was issued.

5. The petitioner, therefore, submits that on the acceptance of this proposal / notice, the relationship with the State judicial service came to an end. Meaning thereby, the petitioner ceased to be a member of the District judiciary.

6. However, to the surprise of the petitioner, the Administrative Side of this Court, on 17th July, 2014, in a meeting convened for the purpose, decided that the petitioner's proposal which was forwarded to the State for acceptance be recalled and the earlier Government Resolution dated 5th July, 2014, be cancelled. The petitioner states that acting upon such a recommendation, the State issued the impugned Resolution dated 4th August, 2014, whereunder the request for voluntary retirement came to be rejected. Prior thereto, on 18th July, 2014, the petitioner came to be suspended from service. On 16th October, 2014, the Memorandum / Articles of charges

meaning the charge-sheet with the statement of imputation came to be served. The five charges based on which the enquiry was proposed were made known to the petitioner whereupon he submitted his explanation thereto. The petitioner, therefore, submits that having ceased to be a part of judicial service after a final act of acceptance of petitioner's proposal as above, thereafter seeking to resile from the decision to allow the petitioner to voluntarily retire, suspending him from judicial service pending enquiry, are all vitiated in law. Urging thus, the writ petition is filed.

7. Mr. Anturkar, learned senior counsel appearing for the petitioner would submit that by Rule 66 of the subject Rules, the petitioner, on notice being served, can voluntarily retire. The order dated 5th July, 2014, having been already issued but from the record it appears that the same was not brought to the notice of the High Court. The High Court administration, unmindful of that, proceeded and decided to hold a disciplinary enquiry. The High Court administration could not have done so once the petitioner was allowed to retire voluntarily from the State judicial service. The further act of the Court

administration in suspending the petitioner from service is also vitiated for you can suspend somebody who is in service and not out of it. In any event, the orders are erroneous and the petitioner at no stage was heard or allowed to represent against them. Everything has been done and concluded behind his back. Now, the position is that the petitioner gets pushed back in service which he had already left.

8. Reliance is placed upon a Division Bench judgment of this Court reported in Vol.105 (4) Bombay Law Reporter Pg. 918 – 2003 *Shri Madanlal Sharma vs. State of Maharashtra through Chief Secretary & Ors.*

9. On the other hand, Ms. Godse appearing on behalf of the respondents invites our attention to the affidavit-in-reply and submits that it is erroneous to assume that the petitioner was allowed to retire voluntarily from the State judicial service. The petitioner submitted a proposal for voluntary retirement and gave the requisite notice. Initially there was a recommendation from the High Court administration to the State and that was treated as a positive act on the part of the

administration and the Government Resolution dated 5th July, 2014, was issued. However, the decision to allow the petitioner to retire voluntarily was prospective. Meaning thereby, the notice to retire voluntarily from service was accepted, but the retirement was to take effect from a future date. The law is well settled that before the given date and time, parties can withdraw the acceptance. Therefore, before the retirement could take effect, the earlier resolution was recalled and cancelled. Once it was cancelled by the State on 4th August, 2014, then, the petitioner was made aware of the further decision as well. The affidavit, in paragraph 6, sets out as to how the Principal District & Sessions Judge, Pune forwarded acknowledgement of the service of the Government Resolution dated 4th August, 2014. The petitioner was informed about the same and the report in that behalf was forwarded on 16th August, 2014. It is futile, therefore, to urge that the petitioner stands voluntarily retired. Everything was withdrawn before the effective date. Once the earlier Government Resolution was revoked and validly, then, the petitioner could have been served with a charge-sheet and suspension order. Even the decision to hold a disciplinary enquiry is not vitiated in law for

Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982, permits such a course. The writ petition, therefore, deserves to be dismissed.

10. In any event, Ms. Godse urges that now the High Court administration, as a subsequent development, has recalled the suspension order. The petitioner has attained the age of superannuation and stood retired. As and when the High Court administration reopens the case / enquiry, then, depending upon other facts and circumstances, including applicability of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982, the petitioner can raise any grievance. The writ petition is rendered infructuous because of these subsequent developments.

11. With the assistance of the learned advocates appearing for both sides, we have perused the writ petition and all annexures thereto. True it is that the suspension order served on the petitioner stood withdrawn. In the meanwhile, the petitioner has attained the age of superannuation. He stands retired from service. However, that by itself and without

anything more will not render the controversy infructuous.

12. The admitted facts would reveal as to how the petitioner served a notice, copy of which is Annexure-A and sought voluntary retirement. That notice may have been accepted by the authorities but what is relevant to note is that the petitioner having satisfied the requirement of Rule 66, the voluntary retirement proposal came to be forwarded to the State. Initially, the State Government accepted the notice / proposal and communicated its decision in that behalf dated 5th July, 2014, to the petitioner. However, it is common ground that the effective date in the order passed by the State on 5th July, 2014, is 6th August, 2014. The proviso to Rule 66(2) of the subject Rules clarifies the obvious legal position. The acceptance of a voluntary retirement notice is required and if that acceptance is conditional or if it is to come into effect at a future date, then, before that date the acceptance can be withdrawn. Prior to that date, the impugned resolution has been issued. A copy thereof at page 16 would reveal as to how the petitioner's proposal / notice was dealt with, duly forwarded and accepted initially, but effective from a future date. Prior to

that date, it was open for the authorities to reconsider their decision. If the decision earlier taken had not come into effect, then, it could have been recalled. That is how the matter has been approached. The petitioner could have retired only with effect from 6th August, 2014. Prior to that date, he was informed that his proposal or request for voluntary retirement though accepted, the decision in that behalf is cancelled. That decision stood withdrawn and recalled. The reasons for the same are also enumerated in the impugned resolution dated 4th August, 2014.

13. We see no substance in the contentions of Mr. Anturkar that given this factual position, the petitioner was still entitled to be heard. The petitioner is not entitled to be heard before a decision to initiate a disciplinary proceeding or suspending him pending departmental enquiry / disciplinary proceedings. That is admittedly not the law. The petitioner would have an opportunity to defend himself and get exonerated at a full fledged inquiry. Further, in the event the petitioner had continued in service, he would draw the subsistence/ sustenance allowance as per Rules. No prejudice is caused by

an act of suspension.

14. The petitioner having been informed of the decision dated 4th August, 2014, by the Principal District Judge, we do not see any substance all the more in the grievance. It may be that the petitioner was informed at a subsequent date, but the Principal District Judge at Baramati was immediately informed that the petitioner's services are continued. He is still a part of the judicial service. He has not been allowed to retire voluntarily as per his request.

15. To our mind, therefore, this is not a case where this Court can come to the conclusion that the impugned decisions are either arbitrary or vitiated by any error of law apparent on the face of the record. They are consistent with the mandate of the Rules and particularly Rule 66 of the Pension Rules. Equally, if the petitioner stands retired by attaining the age of superannuation and his suspension goes, does not mean that there cannot be any inquiry. We brought to the notice of the counsel appearing for the parties, the clear language of Rule 27 of the Pension Rules. Within the parameters thereof, it would

be permissible for the administration to hold and conclude an enquiry though the petitioner stands superannuated and retired from the service. In the event the petitioner is aggrieved by any such act, he may question it, but we do not think that the present Writ Petition can be allowed to be converted into a proceeding to question such inquiry. The petitioner has his remedies which he can work out in accordance with law.

16. As a result of the above discussion, we do not find that the judgment in the case of *Madanlal Sharma* can assist the petitioner's senior counsel.

17. There, the petitioner came to be appointed in service; he was absorbed. He was treated as an employee of the State of Maharashtra. He came to be deputed temporarily to Zilla Parishad, Nanded. He was deputed for training as well. The Chief Executive Officer, Zilla Parishad, Nanded, passed an order suspending the petitioner on the ground that he was found to be unsuitable as a trainee and had become a nuisance to the Training Centre. The petitioner was allowed to draw

subsistence allowance. There was no progress in the inquiry. The suspension was recalled and the petitioner was transferred. The petitioner, therefore, complained that this charge-sheet and served on him resulted in an *ex-parte* inquiry. In the meanwhile, when the case was in cold storage, he attained the age of superannuation and stood retired. It is in these factual circumstances and peculiar to that petitioner's case that this Court considered the legal issue, particularly of the suspension and its legality and validity, the dismissal order which, according to the petitioner, stands vitiated for non payment of salary and subsistence allowance and the dismissal from service suffered from delay and laches.

18. We do not think that such a controversy arises for our consideration and determination. This decision is, therefore, clearly distinguishable on facts.

19. As a result of the above discussion, the present petition fails. It is dismissed. There shall be no order as to costs.

B.P. COLABAWALLA, J. S.C. DHARMADHIKARI, J.